

REMARKS RESPONSIVE TO THE OFFICE ACTION

Claims 1-15 are pending. Claims reconsideration and allowance are respectfully requested in light of the following remarks.

Rejections under 35 U.S.C. §102

RE: CLAIM 1, 3, and 5:

Claims 1, 3 and 5 stand rejected under 35 U.S.C. §102(e) in view of U.S. Patent No. 6,588,637 by Gates et al. ("Gates").

APPLICANT'S RESPONSE RE: CLAIM 1

Applicant appreciates the Examiner's careful attention to the examination of this application. Applicant respectfully traverses the Examiner's rejection. "Anticipation under Section 102 can be found only if a reference shows exactly what is claimed."¹ Applicant submits that the present invention as claimed in Claim 1, or any other claim, is not anticipated by the disclosure of Gates. Gates does not identically disclose or describe what is claimed, exactly, or even approximately. It is well established that "For a prior art reference to anticipate in terms of 35 USC §102, every element of the claimed invention must be identically shown in a single reference."² There is no identical disclosure or description of the elements of the claimed invention as required for the rejection to be proper.³ Insofar as they may be applied against the Claims, these rejections are respectfully traversed.

Specifically, the Examiner contends that Gates includes "the radial relief (44) between the parallel mounting holes (46) of the body." However, Gates discloses a "notch" as

¹ *Titanium Metals Corp. v. Banner*, 778 F.2d 775 (Fed. Cir. 1985).

² *In Re Bond*, 910 F.2d 831 (Fed. Cir. 1990).

³ *In Re Bond*, 910 F.2d 831 (Fed. Cir. 1990).

distinguished from the relief of the present invention.⁴ As can be seen in FIGURE 1, notch 44 is “V” shaped. Applicant specifically refers to the relief as being “radial.” As defined in the American Heritage® Dictionary, “radial” is defined as “developing symmetrically about a central point.” In contrast, the American Heritage® Dictionary, defines “notch” as “a ‘V’ shaped cut” which is what Gates accurately discloses. The notch disclosed by Gates is not a radial relief and there is no center point from which all points along the “V” shaped notch have the same approximate distance. Therefore, Gates does not disclose a “radial relief.”

As further stated in MPEP §2131, in order for a reference to anticipate a claim, each and every feature of the claim must be shown in the reference. Therefore, because Gates does not show a “radial relief,” rejection of Claim 1 under 35 U.S.C. §102(e) in view of Gates is improper. Accordingly, Applicant respectfully requests that the rejection of Claim 1 under 35 U.S.C. §102(e) in view of Gates be withdrawn and that Claim 1 be allowed.

APPLICANT’S RESPONSE RE: CLAIM 3

The Examiner states that “Gates et al., discloses the body (40) is generally rectangular. *See Figure 1.*” Applicant respectfully disagrees. The shading of Figure 1 and extension of long axis 62 unmistakably identify body 40 as being cylindrical. Thus, again, Gates does not identically disclose what Applicant has claimed in Claim 3. Notwithstanding the foregoing, Applicant respectfully traverses the Examiner’s rejection. Applicant submits that Claim 3 depends from Claim 1. Applicant has traversed Examiner’s rejection of Claim 1. As such, Applicant respectfully submits that Claim 3 is allowable as depending from an allowable claim.

APPLICANT’S RESPONSE RE: CLAIM 5

Applicant respectfully traverses the Examiner’s rejection. Applicant submits that Claim 5 depends from Claim 1. Applicant has traversed the Examiner’s rejection of Claim 1. As such, Applicant respectfully submits that Claim 5 is allowable as depending from an allowable claim.

⁴ U.S. Pat, 6,588,637, col 3, ln. 26.

Rejections under 35 U.S.C. §103

RE: CLAIM 2

Claim 2 stands rejected under 35 U.S.C. §103(a) in view of Gates and U.S. Patent No. 5,928,232 by Howland et al. ("Howland").

APPLICANT'S RESPONSE RE: CLAIM 2

Applicant respectfully traverses the Examiner's rejection. Applicant submits that Claim 2 depends from Claim 1. Applicant has traversed the Examiner's rejection of Claim 1. As such, Applicant respectfully submits that Claim 2 is allowable as depending from an allowable claim.

Notwithstanding the foregoing, Applicant asserts that the Howland reference is non-analogous art. "[T]o ascertain the scope of the prior art, a Court examines 'the field of the inventor's endeavor,'...and' 'the particular problem with which the inventor was involved,' '...at the 'time the invention was made,'...Defining the problem in terms of its solution reveals improper hindsight in the selection of the prior art relevant to obviousness."⁵ Howland discloses a medical device for the repair of spinal cords. The countersinks referenced by the Examiner are associated only with a top clamp portion used to mate and grip to a serrated spinal rod. Applicant respectfully submits that there is no suggestion or motivation to combine the disclosures from these unrelated fields of endeavor, and therefore the rejection is improper on these grounds as well. Still further, the cylindrical body 40 disclosed by Gates does not yield sufficient structure to accommodate the countersink of Applicant's invention. This is understandable since Gates was not attempting to solve the problem of mating to an existing control body of a vehicle handle bar.

RE: CLAIM 4

Claim 4 stands rejected under 35 U.S.C. §103(a) in view of Gates and U.S. Patent No. 6,644,614 by Chen ("Chen").

⁵ *Monarch Knitting Machinery Corp. v. Fukuhara Industrial & Trading Co., Ltd.*, 139 F.3d 877, 45 USPQ2d 1977 (Fed. Cir. 1998); *See, e.g., In re Antle*, 58 CCPA. 1382, 444 F.2d 1168, 1171-72 (warning against selection of prior art with hindsight).

APPLICANT'S RESPONSE RE: CLAIM 4

Applicant respectfully traverses the Examiner's rejection. Applicant submits that Claim 4 depends from Claim 1. Applicant has traversed the Examiner's rejection of Claim 1. As such, Applicant respectfully submits that Claim 4 is allowable as depending from an allowable claim.

RE: CLAIMS 6-10, 12 and 15

Claims 6-10, 12 and 15 stand rejected under 35 U.S.C. §103(a) in view of Gates and U.S. Patent No. 6,234,510 by Hammons ("Hammons"). Claim 11 stands rejected under 35 U.S.C. §103(a) in view of Gates, Hammons and Chen. Claim 13 stands rejected under 35 U.S.C. §103(a) in view of Gates, Hammons and Howland. Claim 14 stands rejected under 35 U.S.C. §103(a) in view of Gates, Hammons and U.S. Patent No. 6,349,042 by White ("White").

APPLICANT'S RESPONSE RE: CLAIM 6

Applicant respectfully traverses the Examiner's rejection. Applicant submits that Claim 6 depends from Claim 1. Applicant has traversed the Examiner's rejection of Claim 6. As such, Applicant respectfully submits that Claim 6 is allowable as depending from an allowable claim.

APPLICANT'S RESPONSE RE: CLAIMS 7, 8 and 15

Applicant incorporates his responses above for the purpose of traversing the Examiner's rejection to these claims. Applicant reasserts that the Howland reference is non-analogous art for the reasons stated above. Applicant further asserts that the Hammons reference is non-analogous art, and for this reason, as demonstrated hereinabove, renders the rejection improper and traversed. Moreover, there is no suggestion of motivation for the combination of Hammons and Gates whatsoever upon which the proposed combination could be considered proper. Still further, even so improperly combined, they fail to teach the claimed disclosure of the Applicant's invention.

Hammons is directed to a trailer hitch guide for guiding a socket mounted on a trailer tongue into alignment with a ball hitch.⁶ Boats and trailers are not "vehicle accessories" such as those

⁶ U.S. Pat. 6,234,510; col. 6, lns. 11-13.

contemplated by the present invention⁷, nor are trailer hitches alignment guides attachable to control bodies of handlebar operated vehicles, or related to them in any way.

The Examiner correctly points out that "Gates et al., does not disclose a pair of hollow standoffs." The Examiner asserts that Hammons teaches the pair of hollow standoffs (30 and 138) (column 4, lines 14-16). Applicant appreciates the Examiner's direction to the text considered as the basis for the rejection. However, the Examiner's assessment of the purpose and function of the tubes (30, 138) in Hammons is incorrect. A reading of Hammons clearly identifies the tubes as simple receptacles for receiving studs 44 from fence 40.⁸ The tubes function to removably retain fence 40 and absorb impact forces.⁹ They do not perform any "standoff" function whatsoever, and do not function to secure the ball supporting base plate 20 to the vehicle. Tubes 30 (and 138) of Hammons are required to be integral to the base 20, whereas Applicant's standoffs are not.¹⁰ The distinctions outnumber the similarities and there is simply no colorable relevance to the cited reference and no proper basis for the asserted combination. Indeed, there is no evidence in the prior art, as a whole, that suggests to one of ordinary skill in the art the collective elements of Applicant's invention.¹¹

As stated, there are no factual teachings, suggestions or incentives in the cited prior art that showed the propriety of combination. The requirement is that the showing of actual evidence must be *clear and particular*. Measuring a claimed invention against the standard established by section 103 requires the oft-difficult but critical step of casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field.¹² Close adherence to this methodology is especially important in the case of less technologically complex inventions, where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight

⁷ U.S. Pub. 2004/0108348 A1; para. 0003.

⁸ U.S. Pat. 6,234,510; col. 4, lns. 24-29.

⁹ U.S. Pat. 6,234,510; col. 4, lns. 29-34; col. 4, lns. 39-41.

¹⁰ U.S. Pat. 6,234,510; Fig. 2, *as compared to* U.S. Pub. 2004/0108348 A1; Fig. 4.

¹¹ *Fromson v. Advance Offset Plate, Inc.*, 755 F.2d 1549 (Fed. Cir. 1985).

¹² *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 U.S.P.Q. (BNA) 303, 313 (Fed. Cir. 1983).

syndrome wherein that which only the inventor taught is used against its teacher."¹³ Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references.¹⁴ The Examiner can satisfy burden of obviousness in light of combination "only by showing some objective teaching [leading to the combination]."¹⁵ Combining prior art references without evidence of such a suggestion, teaching or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of hindsight.¹⁶ Again, the showing must be clear and particular. Broad conclusory statements regarding the teaching of multiple references, standing alone, are not "evidence."¹⁷ No such evidence exists in the Description of the Hammons or Gates patents. Applicant respectfully asserts that the Examiner has combined references without evidence of the propriety for doing so, in a hindsight analysis of the numerous features of the Applicant's present invention.

APPLICANT'S RESPONSE RE: CLAIMS 9 -14

Applicant respectfully traverses the Examiner's rejection. Applicant submits that Claims 9-14 depend from Claim 8. Applicant has traversed the Examiner's rejection of Claim 8. As such, Applicant respectfully submits that Claims 9-14 are allowable as depending from an allowable claim.

¹³ *Id.*

¹⁴ *In Re Anita Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2D (BNA) 1614, (*abrogated on other grounds*) (Fed. Cir 1999) *citing*; *C.R. Bard, Inc. v. M3 Sys., Inc.*, 157 F.3d 1340, 1352, 48 U.S.P.Q.2D (BNA) 1225, 1232 (Fed. Cir. 1998) (describing "teaching or suggestion or motivation [to combine]" as an "essential evidentiary component of an obviousness holding").

¹⁵ *Id.*, *citing*; *In re Fritch*, 972 F.2d 1260, 1265, 23 U.S.P.Q.2D (BNA) 1780, 1783 (Fed. Cir. 1992).

¹⁶ *Id.*, *citing*; *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138, 227 U.S.P.Q. (BNA) 543, 547 (Fed. Cir. 1985).

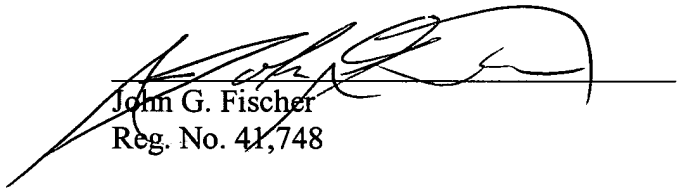
¹⁷ *Id.*, *citing*; *C.R. Bard*, 157 F.3d 1340, 1352, 48 U.S.P.Q.2D (BNA) 1232.

CONCLUSION

Applicant does not believe that any fees are due; however, in the event that any fees are due, the Commissioner is hereby authorized to charge any required fees due (other than issue fees), and to credit any overpayment made, in connection with the filing of this paper to Deposit Account 50-2180 of Storm LLP.

Should the Examiner require any further clarification to place this Application in condition for allowance, the Examiner is invited to telephone the undersigned at the number listed below.

Respectfully submitted,



John G. Fischer
Reg. No. 41,748

Dated: May 15, 2006

Storm LLP
901 Main Street
Suite 7100
Dallas, Texas 75202
Telephone: (214) 347-4703
Fax: (214) 347-4799